

**FREDERICK COUNTY PLANNING COMMISSION**  
**Meeting Minutes**  
**February 23, 2011**

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**Commission Members Present:**

Richard Floyd, Secretary  
Catherine Forrence  
Robert Lawrence  
John McClurkin, Vice Chair

Billy Shreve, BoCC Liaison  
Robert White, Chair  
Audrey Wolfe

**Staff Present:**

Ron Burns, Transportation Engineer, Community Dev. Division  
Mark Depo, Manager, Community Dev. Division  
Tolson DeSa, Planner, Community Dev. Division  
David Dunn, Asst. Co. Manager  
Jim Gugel, Manager, Community Dev. Division  
Dial Keju, Transportation Planner, Community Dev. Division  
Shawna Lemonds, Project Manager, Community Dev. Division  
Kathy Mitchell, Asst. County Attorney  
Beth Pasierb, Planner, Facilities, FCPS  
Robert Shen, Transportation Engineer, DPW  
Eric Soter, Director, Community Dev. Division  
Kelly Weaver, Asst. Budget Officer, Budget

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**AFTERNOON SESSION**

**CHAIR WHITE BROUGHT THE MEETING TO ORDER AT 1:00 P.M.**

**AGENCY COMMENTS/AGENDA BRIEFING**

Eric Soter discussed the upcoming Planning Commission schedule stating the Commission will meet on March 9, 2011, starting a 9:30 a.m., but will not meet on March 16<sup>th</sup>, the usual second Wednesday. Staff would like to meet with the Planning Commission on March 30, 2011, the fifth Wednesday instead, for a workshop to present and discuss newly initiated text amendments before taking them back before the BoCC.

**MINUTES**

**a. November 17, 2010**

**MOTION:** Ms. Forrence made a motion to approve the minutes from November 17, 2010, with corrections as noted, 2<sup>nd</sup> by Ms. Wolfe.

**Forrence/2<sup>nd</sup> Wolfe - Approved 6-0-1-0**

**Yeas-6 (Forrence, Wolfe, Lawrence, Floyd, White, McClurkin), Nays-0, Abstain- 1 (Shreve), Absent-0**

**b. January 19, 2011**

**MOTION:** Ms. Forrence made a motion to approve the minutes from January 19, 2011, with corrections as noted, 2<sup>nd</sup> by Ms. Wolfe.

**Forrence/2<sup>nd</sup> Lawrence - Approved 6-0-1-0**

**Yeas-6 (Forrence, Wolfe, Lawrence, Floyd, White, Shreve), Nays-0, Abstain- 1 (McClurkin), Absent-0**

**c. January 12, 2011**

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The Planning Commission noted discrepancies in the votes and attendance throughout the document and requested that the document be rechecked, revised and brought back before the Planning commission for approval.

### **CAPITAL IMPROVEMENT PROGRAM**

- a. **Capital Improvement Program (CIP) Review** – Presentation of the Staff recommended fiscal years 2012-2017 Capital Improvements Program (CIP) and finding of consistency with the comprehensive plan. The CIP includes the following project areas: General Government, Water and Sewer, Solid Waste, Parks & Recreation, Watershed Restoration, Roads, Bridges, Highways, Frederick Community College, Board of Education and Municipalities.

### **Findings/Recommendations:**

Staff recommended that the Frederick County Planning Commission find:

1. That the location, character, and extent of the Recommended Fiscal Years 2012-2017 Capital Improvement Program are consistent with the Frederick County Comprehensive Plan.

Should the Planning Commission find that the location, character, and extent of the Staff Recommended Fiscal Years 2012-2017 Capital Improvement Program are not consistent with the Frederick County Comprehensive Plan, it is recommended that the Commission include its reasons (as prescribed in subsection (b) of Article 66B section 3.08) in an effort to aid the Board of County Commissioners in understanding the issue(s) of concern.

### **Staff Presentation:**

Shawna Lemonds presented the Staff recommended CIP Program Summary.

Ms. Lemonds noted updates on the report with regard to changes in numbers, one in sentence on page 155 which states "Compared to the 2010-11 school year...the enrollment/capacity rates are projected to increase to 98% despite the new elementary school CIP projects." The percentage should be corrected to state 101%. The same reference to that percentage on the right hand side of page 156 should also be corrected to state 101%.

Ms. Lemonds stated the BOCC provided County Staff with direction regarding funding priorities for preparation of the FY 2012-2017 CIP:

- Keep Lincoln Elementary, Oakdale Elementary, and North Frederick Elementary projects on track, followed by:
- Critical Systemic Improvements
- Transportation

After reviewing the submissions and prioritizing projects based on BOCC direction, the Staff Funding Committee prepared the referenced document, with the major changes from the prior adopted CIP which are summarized as follows:

- Brunswick Fire Station: Removed due to September 2010 letter from Volunteer Organization
- Walkersville Library: Delayed from FY 2015 to FY 2017 due to associated increase in operational costs and availability of impact fee revenue
- Utica DP (Phase 2): Delayed due to associated increase in operational costs and availability of recordation tax revenue
- Parks and Recreation Community Grants: Program suspended until further notice

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- Thurston Road Culverts: Reduced scope and completed with in-house staff
- Reels Mill Road Bridge: Received funding prior to Pete Wiles Road Bridge per department's priorities
- FCC Science/Tech Hall Renovations: Moved up to FY 2012 from FY 2013 in order to match state funding. This was only accomplished by FCC moving surplus funding from a current project and delaying funding for 2 other projects
- FCPS/BOE priority shift:
  - The first 3 priorities remain the same: Lincoln ES addition/modernization, Oakdale ES addition, North Frederick ES replacement/modernization
  - Priorities beyond the first 3 have changed per FCPS/BOE input:  
*Previously: Waverley ES addition, Kemptown ES addition, and Urbana MS addition*  
*Currently: Frederick HS modernization, Urbana area ES new, Waverley ES addition*
  - Waverley ES and Kemptown ES were delayed in order to accommodate the change in priorities
- Municipalities: Church Street Parking Deck Rehab/Rebuild change in project. The City of Frederick planned to replace the parking deck in FY 2014, and is now going to rehab the existing structure and extend the useful life, with replacement occurring beyond the six-year CIP

Lastly, projects that are not anticipated to be funded in the six-year CIP have been removed from the document. Many of the County departments/agencies have comprehensive or master plans that outline the upcoming projects and those documents should be the primary source to be used to identify those projects beyond the six-year CIP timeframe.

### **Discussion:**

Mr. McClurkin, in relation to the Law Enforcement Center, page 39, questioned the request to add 12 additional Dispatch workstations in addition to the ones currently in place and questioned whether the intent is for City Personnel that are expected to move to the Center or for new personnel.

Ms. Weaver stated that within the estimated operating budget figures, there are no new personnel associated with this project. She stated she would presume the existing personnel would occupy the additional workstations whether it is intended for County of City personnel.

Mr. Floyd questioned the prioritization of certain Frederick County Public School projects, expressing concern about additions planned for other schools, such as Oakdale Elementary taking precedence over a new replacement school for North Frederick Elementary.

It was stated that the availability of Budget funds is the reason.

Ms. Pasierb explained that when the Oakdale project is completed, Frederick County Public Schools will be completing the redistricting of Oakdale High which included a portion of the Centerville Elementary attendance area moving to the Oakdale which would move approximately 100 students out of Centerville into Oakdale. The addition is needed to address capacity issues at both Centerville and Oakdale Elementary Schools. Even with the move, Ms. Pasierb stated that Centerville will still be at about 130 % capacity which is why FCPS has put the New Urbana Elementary School in that program.

### **Public Comment:**

None

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**MOTION:** Ms. Forrence made a motion for finding of consistency of the Fiscal Year 2012-2017 Capital Improvement Program with the County Comprehensive Plan, 2<sup>nd</sup> by Ms. Wolfe.

**Forrence/2<sup>nd</sup> Wolfe - Approved 7-0-0-0**

**Yeas-7 (Forrence, Wolfe, Lawrence, Floyd, White, McClurkin, Shreve), Nays-0, Abstain- 0, Absent- 0**

### **TRANSPORTATION**

- a. **Frederick County Freight Transportation Study** – Briefing to the Planning Commission on the ongoing Frederick County Freight Transportation & Freight Dependent Land Use Study.

#### **Staff Presentation:**

John Thomas presented the summary of the Freight Transportation & Freight Dependent Land Use Study report. He stated the project is funded through the Metropolitan Washington of Governments (MWCOC) Transportation and Land Use Connections (TLC) program which awarded our jurisdiction technical assistance in the form of consultants to assist in the process.

Mr. Thomas summarized the scope, the schedule, and approaches involved in the study. The project will identify ways to enhance the relationship between goods movement and existing and proposed Freight Dependent land uses and that short and long-term land use and transportation recommendations will be explored. The project will identify best practices for accommodating freight movement while maximizing safety, air quality and quality of life.

Mr. Thomas described outreach efforts stating the main concentration will be with business owners and operators. One of which is with an on-line web survey in which citizens and business owners can utilize. They will be targeting specific businesses in the county and freight dependent land uses conducting in-person and/or telephone interviews. On March 8, 2011, a Stakeholder's meeting is scheduled with plans to invite county citizens and those specific business owners to discuss different opportunities. Mr. Thomas listed other partners in the process outside of the business community with includes MD State Highway Administration (SHA), MD Transit Administration (MTA), MD State Police, CSX, and County and Municipal Public Works Divisions.

Mr. Thomas concluded stating a final report will be created by July of this calendar year at which time, he will present the report to the Planning Commission.

#### **Discussion:**

Mr. Lawrence questioned whether transportation of hazardous waste and chemicals are included in the study.

Mr. Thomas stated the study was not in response to any specific issue with respect to hazardous materials, however, if there is an issue that they happen to come across in the review of the study, he stated they will identify it. He added that they do have as one of their partners, the County Emergency Management, which will be reviewing such issues.

In relation to security vulnerabilities, Mr. Lawrence questioned whether any such studies specific to freight rail security will be incorporated into this study.

Mr. Thomas stated within the Freight Dependent Land use discussion, they will discuss and reference the way the MD State Police conducts their existing truck enforcement. In reference to rail, he stated CSX and MTA

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have their own security procedures in place and plan and will also plan to have a small security section highlighting the existing conditions as to how hazardous materials are handled.

Mr. Soter stated that although security is an important issue, the scope of this study does not include detailed security measure but rather the scope of learning about and capitalizing on those freight dependent land uses.

Mr. White questioned whether this study would help obtain funding to improve highways & roads.

Mr. Thomas stated there currently is no direct funding, however, in terms of prioritizing, for example, if the Phase IV/I-270 Project is on multiple priority lists such as the MD State Priority Freight Transportation list and the Council of Governments Priority Freight Transportation list or others, then when their own normal Transportation priority list is submitted, they would highlight that frequency. He stated it is unclear as to whether that actually adds opportunities for additional funding but could prove to be beneficial. There have been discussions that there may be freight specific dollars in the future that would help in managing some projects.

Referencing Page 3, related to Freight facilities, Mr. White commented that these facilities take up large amounts of acreage but result in very few jobs and questioned whether warehousing facilities were the best use of land, specifically GC zoned land, whether the pros outweigh the cons, and whether there would be any assessment of the relative value this use versus another type of use.

Mr. Thomas stated there will not be a full market analysis for every freight-dependent land use parcel in the county, which would be needed for that type of assessment but that it is part of the equation. They would let the market decide whether or not they can locate in a certain area and that would guide policy decisions.

Ms. Forrence questioned whether Economic Development had been involved in this process.

Mr. Thomas stated Economic Development assisted in preparing the Stakeholders list and will be helping with outreach as well.

Referencing page 5, Mr. McClurkin stated the study appears slightly biased toward finding ways to increase truck traffic in Frederick County without necessarily weighing the costs to the citizens or considering the input of citizens such as local driver and bicycle riders. He commented on the numerous bicycle races conducted in the County and the increase in truck traffic could prove to be detrimental. He questioned whether the outreach efforts would be broadened and extended beyond just businesses and truck owners.

Mr. Thomas stated that as the overall volumes increase those truck volumes will also increase and one of the outcomes of this study will be an assessment of how those truck volumes are going to grow. He stated the intent is to accommodate what is already there and to deal with the fact that it will be there in the future.

Mr. McClurkin expressed concern for the overemphasis of the study on trucks and questioned whether there would a cost analysis of what taxpayers would have to pay to expand roads for truck traffic versus any potential benefits achieved.

Mr. Thomas stated he takes the multimodal approach to balancing and accommodating the need based of all variables, i.e. County citizens, commuting citizens, business owners, cyclists, pedestrians, and the trucks and not targeting a specific mode.

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Mr. McClurkin questioned the level of involvement of County Staff in the study.

Mr. Thomas explained that the study is funded by the Council of Governments and will manage the consultant and associated tasks. County Staff essentially operates as the Project manager of the process. The Outlined Tasks and Deliverable come to the County Staff to oversee and review and then are sent back to the consultant to revise.

ACTION: No Formal Action - Informational Item Only

**EXTENSION ORDINANCE**

- a. **Extension Ordinance** – An ordinance to extend certain development review approvals, deadlines and applications for 3 years.

**Staff Findings/Recommendations:**

The Draft Ordinance is similar to the 2009 Extension Ordinance adopted July 25, 2009, but adds improvement plans to the list of approvals eligible for the 3-year extension. In addition, the ordinance does not require the applicant to submit an application or pay a fee to obtain the benefit of the extension. Staff has created a list of plans and applications that are eligible for the extension, and will send out confirmatory letters specifying the new expiration dates and deadlines.

The draft ordinance applies to approvals that were:

- a. Active and valid on January 1, 2011
- b. Granted or became effective between January 1, 2011 and the effective date of the Ordinance; or
- c. Eligible for the 3-year extension provided under the 2009 Ordinance

The Draft Ordinance also provides that it does not apply to approvals that were granted or became effective after the effective date of the draft ordinance.

Staff recommends that the Frederick County Planning Commission decide whether to recommend approval or denial of the Draft Ordinance to extend certain development plans, approvals and applications.

**Staff Presentation:**

Kathy Mitchell and Mark Depo presented the Staff report.

**Discussion:**

Mr. Lawrence commented that in dealing with APFO approvals, when extending these approvals into the future, he questioned whether potential problems are being created in terms of looking at which schools need improvements or which areas of the county need new schools when only considering what exists on a specific date of consideration as opposed to what was already approved. He stated there could be thousands of children approved through these extensions that would be affected.

Ms. Mitchell stated she could confirm that the APFO approvals that are being extended are based on data at the time they were approved and not current data.

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Ms. Pasierb stated with the new test, background growth is looked at, data is obtained from the County Planning Department that outlines what is existing, approved or un-built developments within that school attendance area, and then those students are applied to that test. She stated what would make this difficult is whether that Planning Department can continue to track it.

Mr. White questions what the anticipated impacts are on roads and traffic.

Mr. Burns stated there are two issues of concern. He explained one scenario where a developer may have been approved for a specific period of time such as the 2005-2006 era then was approved for an extension for 3 years and then again for an additional 3 years. He stated if they were required to contribute toward an escrow, they would be paying with 2005-2007 dollars and while inflation has not been that great lately, the cost of construction has increased. Thus, for every year you go out into the future, the escrow accounts will get smaller due to the value of real money over time lessening. The other scenario presented related to the policy decision to keep extending approvals along with the uncertainties in circumstance, could potentially put the new developer/applicant at a competitive disadvantage when compared to the developer that is already approved. The more time that is extended out means more traffic numbers the new applicant has to count. There is a consequence to an action of making it easier for those who have their entitlements versus those who do not. He suggested that for those who have not yet paid, to make an adjustment in the Letter of Understanding (LOU) for the 3 additional years of growth.

Ms. Forrence questioned whether all LOU's would have to be updated and questioned the life time of the escrow accounts.

Ms. Mitchell in relation to the LOU's, stated no and that the letter granting the extension along with the current LOU would constitute the new LOU.

Mr. Burns, in relation to the escrow accounts, stated there used to be a 10-year roll. He explained that when the APFO was redone in 2009, the escrow section was rewritten to state when the 10 year deadline is reached then that money could be used anywhere within the planning region, therefore, there would be no loss of moneys with these extension approvals.

Mr. McClurkin questioned whether the 2009 extension ordinance has generated any economic benefits.

The Planning Commission collectively questioned the number of developers that have gone forward since the granting of the 2009 extension and expressed interest in seeing the actual lists of cases approved for the new extension.

Ms. Mitchell stated the intent of the 2009 extensions was to avoid economic harm to the developers in the pipeline at that time, meaning the avoidance of loss of approvals they had, and due to economic issues, allow them to extend their validity periods or deadlines until when the economy improved.

Staff agreed to provide that information to the Planning Commission.

Mr. White questioned whether there is a limit to the number of times extensions will be granted and suggested looking into a long term policy.

Mr. Soter stated that it is a policy decision of the elected Board of County Commissioners and that such like actions to extend various approvals in not uncommon at the state level and throughout the country.

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Ms. Mitchell added that there have been numerous concerns about approval periods and that long term policies are being looked at and discussed.

**Public Comment:**

David Severn, Esq., representing St. John Properties

Rick Boyle, of Natelli Communities

Scott Miller, Esq., representing Ausherman Development

Denise Jacoby, representing the Land Use Council, Frederick County Builders Association and Frederick County Chamber of Commerce

**MOTION:** Ms. Wolfe made a motion recommending approval of the Extension Ordinance, 2<sup>nd</sup> by Mr. Lawrence.

**Wolfe/2<sup>nd</sup> Lawrence – Approved 5-2-0-0**

**Yeas-5 (Wolfe, Lawrence, Forrence, White, Shreve), Nays-2 (Floyd, McClurkin), Abstain- 0, Absent- 0**

**MOTION:** Ms. Forrence made a motion recommending the Board of County Commissioners consider and discuss with Staff the two (2) points raised by Staff, related to escrow funding, that the escrow must be paid in advance or adding an adjustment to the LOU that accounts for inflation, 2<sup>nd</sup> by Mr. Lawrence.

**Forrence/2<sup>nd</sup> Lawrence - Approved 5-1-1-0**

**Yeas-5 (Forrence, Lawrence, Wolfe, White, McClurkin), Nays-1 (Floyd), Abstain- 1 (Shreve), Absent- 0**

**BREAK AT 2:29 P.M., THE MEETING RESUMED AT 2:39 P.M.**

**ADEQUATE PUBLIC FACILITIES TEXT AMENDMENT**

- a. **APFO Text Amendment** – An ordinance to repeal the provisions of the APFO that require school adequacy testing for development within certain annexed properties within Frederick County municipalities.

**Staff Findings/Recommendations:**

The BOCC adopted an Ordinance on November 16, 2009, that applies the school adequacy provisions of the Frederick County Adequate Public Facilities Ordinance (APFO) to all lands annexed into municipalities within the Territorial Limits of the County after June 23, 2009.

In December 2009, petitions for judicial review were filed by The City of Frederick, the Town of Thurmont, the City of Brunswick, The Town of Emmitsburg, the Town of Myersville, the Burgess and Commissioners of Middletown, the Town of Woodsboro, Summers Farm LLLP, and Crum Commercial Farm Development, LLC.

The BOCC met with representatives of the municipalities and indicated a willingness to consider repealing the adopted Ordinance, while the municipalities consider adopting an APFO or revising their existing APFOs.

The Draft Ordinance, if adopted would repeal these provisions. Therefore, for future development of lands annexed after June 23, 2009, only the municipality's school adequacy testing requirements, if any, would apply.

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Staff recommends the Planning Commission decide whether to recommend approval or denial of the proposed Draft Ordinance.

**Staff Presentation:**

Kathy Mitchell presented the staff report. She noted that two (2) letters were received, one from the Burgess and Commissioners of Walkersville in opposition to this proposed Ordinance to repeal and one from Brunswick in support of this ordinance.

**Discussion:**

Mr. McClurkin questioned if the repeal proposal is granted whether whatever APFO that the municipalities have in place is what applies to development of any annexed land.

Ms. Mitchell stated that was correct and added that if there is no APFO in place then there would be no APFO provisions applied. They would go back to the state of the law that was in place before November 16, 2009.

**Public Comment:**

Winslow Burhans, Mayor, Town of New Market  
David Haller, Town Manager, Town of Emmitsburg  
David Severn, Esq., representing Cities of Brunswick and Walkersville  
Joe Adkins, Planning Director, City of Frederick  
Janice Wiles  
Daphne Gabb, President of the PTA Council of Frederick County  
Carroll Jones, Mayor, City of Brunswick  
M.C. Keegin-Ayre  
Janice Spiegel  
Scott Miller, Esq.

**MOTION:** Ms. Forrence made a motion recommending to the Board of County Commissioners denial of the proposed ordinance, 2<sup>nd</sup> by Mr. Floyd.

**Forrence/2<sup>nd</sup> Floyd - Approved 4-3-0-0**

**Yeas-4 (Forrence, Floyd, White, McClurkin), Nays-3 (Wolfe, Lawrence, Shreve), Abstain- 0, Absent- 0**

**BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 3:48 P.M.**

Respectfully Submitted,

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Robert White, Chair

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